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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,442	11/02/2000	Klaus Hofrichter	20381-19 (50P3910)	7693

7590 01/30/2006

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LONSBERRY, HUNTER B	
ART UNIT	**PAPER NUMBER**
2611	

DATE MAILED: 01/30/2006

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/705,442
Filing Date: November 02, 2000
Appellant(s): HOFRICHTER ET AL.

Jonathan O. Owens
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/27/05 appealing from the Office action mailed 7/5/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-7, 10-14, 18-21, 28-34, 37-44, 56-62 and 64-66.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

U.S. Patent 6,526,581 to Edson

U.S. Patent 6,470,378-B1 to Tracton

U.S. Patent 6,618,764 to Shteyn

Examiner's Official Notice taken with regards to a user profiles in Windows 95, and to include history of use information as part of a profile in a web browser.

Examiner's Official Notice taken with regards to the security certificates and cryptographic modules of Netscape Navigator.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 10, 12-14, 18-21, 28-34, 37-44, 56-62, and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,526,581 to Edson in view of U.S. Patent 6,470,378-B1 to Tracton.

Regarding claim 1, Edson discloses a processes of identifying and managing applications comprising:

Determining a home network configuration profile (column 11, lines 4-19, column 12, lines 21-27, column 14, lines 52-67),

Automatically downloading an application from the server to the home network, the application being operative to provide to the electronic device a diagnostic application (column 11, lines 37-40)

Executing said downloaded application within the home network (column 11, lines 37-40)

Edson does not disclose determining device identification information associated with at least one electronic device in the network system, transmitting a profile to a remote server and based upon the profile downloading an application from the server to a network.

Tracton discloses a system in which a client machine 102, builds a profile which includes processor speed, memory, data storage size, and network speed and sends this profile to a server in order to receive a network application (differently formatted MPEG streams) based upon its profile (column 3, line 66-column 4, line 14, line 33-column8, line 39), each transmitted profile includes a hardware identifier which may be a MAC address, or unique processor identification value, as well as a characteristics portion (column 8, lines 6-39), thus transmitting application data which is tailored to the configuration of the device.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Edson to include the determine device information to create a profile, transmit the profile to a remote server and download the appropriate data based upon that profile as taught by Tracton in order to tailor the application data to the configuration of the home network.

Regarding claims 2, 18, 29, 39, 57, Traction discloses determining the profile based on bandwidth capacity (column 5, lines 49-61).

Regarding claims 3, 4, 19, 20, 30, 31, 40, 41, 58 and 59, Traction discloses a transmitting a profile to a server which includes hardware information, a Netscape browser may be run on a user device (column 76, lines 44-49).

The combination of Edson and Tracton does not disclose a profile, which includes history of use information, and a user profile.

The examiner takes official notice that utilizing a user profile, and taking into account history of use information is notoriously well known in the art. For example, Windows95 enables specific user logins which enable a user to have tailored settings for fonts, background colors and the like, likewise a web browser may transmit a history of use in order to customize advertising to a user.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the combination of Edson and Tracton to utilize a user profile, and to

include history of use information as part of a profile, thus enabling user customization of a graphical interface, in a manner which is atheistically pleasing to a user.

Regarding claims 5-6, 21, 32, 33, 42, 43, 60, and 61, Tracton discloses a system in which a client machine 102, builds a profile which includes processor speed, memory, data storage size, and network speed and sends this profile to a server in order to receive a network application (differently formatted MPEG streams) based upon its profile (column 3, line 66-column 4, line 14, line 33-column 8, line 39).

Regarding claim 7, 34, 44, and 62, Tracton discloses a profile, which includes hardware capabilities.

The combination of Edson and Tracton fails to disclose security and decryption capabilities.

The examiner takes official notice that storing information concerning security and decryption capabilities is notoriously well known in the art. For example, Netscape Navigator includes certificates and cryptographic modules which are used to enable secure access to applications or remote servers, if a certificate is unauthorized, or a level of encryption is unsupported, the application is not able to access any additional data.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Edson and Traction to utilize the security

certificates and cryptographic modules of Netscape, in order to provide protection to a user for sensitive data.

Regarding claims 10 and 37, Traction discloses transmitting client ID information and performing a search to match up an application which will be displayed appropriately based upon the clients characteristics (column 3, line 66-column 4, line 14, line 33-column 8, line 39).

Regarding claim 12, Edson discloses a gateway 13 with CPU 105, which may execute an IP telephony application through the internet (column 9, lines 15-33). Edson's IP telephony application inherently controls AV devices, as the Gateway 13 would have to control either the ADSL modem, XLINX or DSL interface in order to transmit data associated with the IP telephony device to the Internet.

Regarding claim 13, Edson discloses that the home-networked devices may exchange instructions and AV data (column 7, lines 44-56, column 15, lines 14-28).

Regarding claim 14, Tracton discloses that after the profile is transmitted to the server, the content is then automatically downloaded for display (column 5, lines 24-49, column 5, lines 47-64).

Regarding claim 28, Edson discloses a processes of identifying and accessing media comprising:

Determining a home network configuration profile (column 11, lines 4-19, column 12, lines 21-27, column 14, lines 52-67),

Automatically downloading an application from the server to the home network, the application being operative to provide to the electronic device a diagnostic application (column 11, lines 37-40)

Executing said downloaded application within the home network (column 11, lines 37-40)

Edson does not disclose determining device identification information associated with at least one electronic device in the network system, transmitting a profile to a remote server and based upon the profile downloading an application from the server to a network.

Tracton discloses a system in which a client machine 102, builds a profile which includes processor speed, memory, data storage size, and network speed and sends this profile to a server in order to receive a network application (differently formatted MPEG streams) based upon its profile (column 3, line 66-column 4, line 14, line 33-column8, line 39), each transmitted profile includes a hardware identifier which may be a MAC address, or unique processor identification value, as well as a characteristics portion (column 8, lines 6-39).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Edson to include the determine device information to create a

profile, transmit the profile to a remote server and download the appropriate data based upon that profile as taught by Tracton in order to tailor the application data to the configuration of the home network.

Regarding claims 38 and 56, Edson discloses in figure 1, a gateway 13, coupled to a network of devices comprising,

A communications interface (CATV interface 17, x-link 19, ADSL15, Figure 2), which the electronic device communicates with a remote server (column 10, lines 15-29, column 11, lines 24-40),

A network communications interface which the electronic device communicates with the devices within the network of devices (figure 2, Power Line interface 123, HPNA interface 121)

Determining a home network configuration profile (column 11, lines 4-19, column 12, lines 21-27, column 14, lines 52-67),

Automatically downloading an application from the server to the home network, the application being operative to provide to the electronic device a diagnostic application (column 11, lines 37-40)

Executing said downloaded application within the home network (column 11, lines 37-40).

Edson does not disclose determining device identification information associated with at least one electronic device in the network system, transmitting a profile to a

remote server and based upon the profile downloading an application from the server to a network.

Tracton discloses a system in which a client machine 102, builds a profile which includes processor speed, memory, data storage size, and network speed and sends this profile to a server in order to receive a network application (differently formatted MPEG streams) based upon its profile (column 3, line 66-column 4, line 14, line 33-column8, line 39), each transmitted profile includes a hardware identifier which may be a MAC address, or unique processor identification value, as well as a characteristics portion (column 8, lines 6-39).

Therefore it would have been obvious to one skilled in the art at the time of invention to modify Edson to include the determine device information to create a profile, transmit the profile to a remote server and download the appropriate data based upon that profile as taught by Tracton in order to tailor the application data to the configuration of the home network.

Regarding claim 64, Edson discloses that the downloaded application is executed at a gateway device 13 (column 11, lines 30-33).

Regarding claims 65 and 66, Edson discloses a gateway device 13 (Figures 1 and 2).

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,526,581 to Edson in view of U.S. Patent 6,470,378-B1 to Tracton in further view of U.S. Patent 6,618,764 to Shteyn.

Regarding claim 11, Tracton and Edson disclose networked applications.

The combination of Tracton and Edson do not disclose the use of a downloaded device interplay application, which utilizes the resources of at least 2 electronic devices.

Shteyn discloses a HAVI enabled network, which utilizes a HAVI registry 324 which keeps track of devices on the home network, software 320 may connect to the Internet to download a Java applet, which enables the control of lights on the network by another object (column 15, line 31-column 16, line 55).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Tracton and Edson to utilize the HAVI network and registry of Shteyn, thus enabling interoperability of different devices on a common network.

(10) Response to Argument

Arguments with respect to claims 1-7, 10, 12-14, 18-21, 28-34, 37-44, 56-62 and 64-66.

Appellant argues that Edson teaches that diagnostic or software downloads could be automatic, but does not teach automatic diagnostic software downloads as is claimed in the present invention. (Appeal Brief, page 6, paragraph 2).

Regarding Appellant's argument, Claim 1 merely requires that based upon the provided home network configuration profile, an application is automatically downloaded from the server. Edson clearly discloses that configuration information is determined (column 11, lines 3-19, a new device is connected and the system automatically detects and configures communications with the system, and establishes device capabilities and protocols, column 12, lines 21-49, column 14, lines 52-67, thus creating a home network profile consisting of capabilities for a number of devices on the home network), communications with an outside server are established, and software downloads as well as diagnostics are downloaded automatically for a corresponding device. Appellant agrees with the Examiner that software downloads may be automatic. Edson must make use of some sort of device identification information, otherwise the system would be unable to automatically retrieve diagnostic and software downloads for a device, as it would be unable to determine which device out of a multitude of device needs the associated download.

While Edson does disclose that MAC addresses are assigned to various devices on the network, and that these addresses are used to route data to the various devices (column 11, line 41-column 12, line 28), and Edson teaches the creation of a home network profile, Edson specifically fails to teach providing a profile based on device

identification to a server, wherein the server is remote from the home network and then based upon the profile downloading an application. Tracton discloses a system in which a client machine 102, builds a profile which includes processor speed, memory, data storage size, and network speed and sends this profile to a server in order to receive a network application (differently formatted MPEG streams) based upon its profile (column 3, line 66-column 4, line 14, line 33-column8, line 39), each transmitted profile includes a hardware identifier which may be a MAC address, or unique processor identification value, as well as a characteristics portion (column 8, lines 6-39). The profile is transmitted automatically to the server, there is no user interaction, upon receiving the profile, the appropriate application content is downloaded automatically (no user intervention), and is specifically tailored to the needs and capabilities of the client device (abstract, column 5, lines 47-65, column 8, lines 40-55).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Edson to utilize the profile, which includes device identification information, transmit it to a server and download an application as taught by Tracton, for the advantage of downloading applications which are specifically tailored to the needs and capabilities of the client device. Thus the combination of Edson and Tracton teaches each and every element of claim 1.

Appellant argues that Edson does not teach automatically downloading an application from the server to the home network, the application being operative to provide to the or each electronic device, a control application, an interface application, a

device interplay application, a support application, a diagnostic application, or a maintenance application. (Appeal Brief, page 6, paragraph 2)

Regarding Appellant's argument, Appellant admits on page 6 via paragraphs 1-2 that Edson does teach an automatic download of a diagnostic application. Further, at column 11, lines 37-40, Edson specifically states, "Alternatively, the configuration, diagnostics and software downloads could be entirely automatic, even those including communications with an external server via the Internet." Thus Edson meets the limitations of claim 1. As discussed above, Edson teaches creation of a profile, and via automatically accessing a server and downloading a diagnostic application without any interactions by the user, Edson must recognize which device is downloading the corresponding application for. Tracton is relied upon to specifically teach providing a profile to a server. Thus Edson in combination with Traction teaches each and every element of claim 1.

Appellant argues that the configuration profile of the present invention includes device identification information, home network user preferences, history of use, storage capacity, security capabilities as well as resources and bandwidth. The characteristic profile of Traction is not interchangeable with the configuration profile of the present invention (Appeal brief page6, paragraph 3-page 7, paragraph 1).

Regarding Appellant's argument, the claims merely require that a profile be provided to a server remote from the home network. As discussed above, Tracton teaches the transmission of a profile to a server and Edson teaches the creation of a profile of home network devices. Tracton is relied upon to teach profile transmission. Thus it is Edson in combination with Tracton which teaches transmission of a profile to a server.

Support for profile information which includes bandwidth capacity may be found at column 5, lines 49-51 of Tracton. Support for a user profile which includes history of use information and user preferences are taught by Edson and Traction in combination with the Examiner's official notice (support for the Official Notice regarding history of use may be found via U.S Patent 6,177,931 to Alexander, column 29, lines 14-column 30, line 37, support for the Windows95 customization features may via pages 126-129 and 172-173 of the How to Use Microsoft Windows NT4 Workstation). Support for a profile with storage capacity and content decoding capacity may be found at column 3, line 66-column 4, line 14, line 33-column 8, line 39 of Tracton. Support for security and Decryption features is taught by Edson and Traction in combination with the Examiner's official notice taken with regard to Netscape Navigator (support for the Official Notice may be found on pages 862-866 of the Special Edition Using Netscape 2 reference). Therefore, it is not solely features of Tracton, as argued by Appellant, which are relied upon to teach a characteristic profile.

Thus Edson, in combination with Tracton and the Examiner's Official Notice teaches each and every element of the claims.

Appellant argues that Traction does not teach automatically downloading an application associated with a device within a network from a server based on the provided home network configuration profile (Appeal Brief, Page 7, paragraph 2).

Regarding Appellant's argument, as discussed above, Edson is relied upon to teach the creation of a home network profile and automatically downloading an application via a gateway. Tracton is relied upon for transmission of a profile to a server, and based upon the profile, automatically downloading an application (column 3, line 66-column 4, line 14, line 33-column8, line 39) associated with a device on the network. Further Tracton teaches that the device providing the profile is one of many devices (figure 4, figure 8, column 8, lines 6-23), that it may connect via a network of devices, LAN, WAN, Gateway or the like (column 9, line 64-column 10, line 13), and that the device may be a hand held device, a controllable consumer device or a PC (column 8, line 63-column 9, line 30). Therefore, Tracton does teach automatically downloading an application (tailored MPEG video and webpages) associated with a device (a PC, controllable consumer device or hand held device) within a network (the device is on a LAN, WAN, behind a gateway, connected to the Internet) from a server (web server) based on the provided configuration profile (processor speed, memory, data storage size, and network speed).

Appellant argues that there is no motivation to combine the references and that hindsight was used (Appeal Brief, page 8, paragraphs 1-3, page 9, paragraph 1-3).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Edson is relied upon to teach creation of a profile and automatically downloading an application for a device on the network. Edson however, fails to disclose transmission of a profile to a remote server and automatically downloading an application. As discussed above,

Tracton teaches transmission of a profile and downloading an application, the application is specifically tailored to the needs and capabilities of the client device (abstract, column 5, lines 47-65, column 8, lines 40-55). Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Edson to utilize the profile, which includes device identification information, transmit it to a server and download an application as taught by Tracton, for the advantage of downloading applications which are specifically tailored to the needs and capabilities of the client device. Additionally the Examiner notes that motivation to combine was not found in Applicant's disclosure. ,

Further the Tracton and Edson are both found within Electrical Arts. The Examiner further notes that the Electrical Arts are predictable, and Appellant has not provided argument nor evidence why there would be no reasonable expectation of success.

Lastly, as discussed above, the combination of Edson and Tracton has taught each and every element of the claim limitations. Therefore, the Examiner has properly presented a prima facie case of obviousness and the combination of Edson and Tracton is proper.

Appellant argues that Tracton is not directed to a network of devices but only to communications between a server and a client (Appeal Brief, Page 9, paragraph 3).

Regarding Appellant's argument, Tracton teaches that the device providing the profile is one of many devices (figure 4, figure 8, column 8, lines 6-23), that it may connect via a network of devices, LAN, WAN, Gateway or the like (column 9, line 64-column 10, line 13), and that the device may be a hand held device, a controllable consumer device or a PC (column 8, line 63-column 9, line 30). Therefore, Tracton is directed to a network of devices, in particular because a gateway (a device which acts as an interface between two networks) is present. Further, the Examiner notes that Edson is relied upon to teach determining a home network profile, and Tracton is relied upon to teach transmission of a profile. Thus Edson in combination with Tracton teaches each and every element of the claims.

Arguments with respect to claim 11.

Appellant argues that Appellant argues that by dependency, claim 11 contains the same limitations as discussed above, and the remarks from the above sections are incorporated herein and apply equally with respect to the rejections of claims (page 14, paragraph 4-5).

Regarding Appellant's argument, see the above discussion of Edson and Tracton applies equally to claim 11, with Shteyn being relied upon to teach the use of the HAVI protocol in a lighting application which utilizes the resources of at least 2 electronic devices.

Thus the combination of Edson, Tracton and Shteyn teaches each and every element of claim 11.

(11) Related Proceeding(s) Appendix

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hunter Lonsberry

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